

1
2
3
4 ECOFACTOR, INC.,
5 Plaintiff,
6
7 v.
8
9 GOOGLE LLC,
10 Defendant.
11

Case No. 24-cv-00175-JST

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ORDER GRANTING DEFENDANT
GOOGLE LLC'S MOTION TO
DISMISS**

Re: ECF No. 63

Pending before the Court is Defendant Google LLC's motion to dismiss Plaintiff EcoFactor, Inc.'s amended complaint. ECF No. 63. The Court will grant the motion.

I. BACKGROUND

EcoFactor filed this case on January 9, 2024, alleging infringement of its United States Patent No. 11,835,394 (the “’394 Patent”). *See* ECF No. 1. This case is one of the latest in a long line of patent litigations between Plaintiff EcoFactor, Inc. (“EcoFactor”) and Defendant Google LLC (“Google”) relating to smart thermostat and heating, ventilation, and air conditioning (“HVAC”) technologies. *See e.g.*, *Google LLC v. EcoFactor, Inc.*, 4:21-cv-03220-HSG, ECF No. 1 (N.D. Cal. Apr. 30, 2021); *Google LLC v. EcoFactor, Inc.*, 3:21-cv-01468-JD, ECF No. 1 (N.D. Cal. Mar. 01, 2021); *Google LLC v. EcoFactor, Inc.*, 5:22-cv-00162-PCP, ECF No. 1 (N.D. Cal. Jan. 11, 2022).

The Court previously dismissed EcoFactor’s complaint on grounds that the ’394 Patent was “directed to a patent-ineligible abstract idea” and “lack[ed] an inventive concept sufficient to elevate it to a patent eligible invention.” ECF No. 56 (“Order”) at 10–11. The Court “grant[ed] EcoFactor one opportunity to file an amended complaint.” *Id.* at 12. EcoFactor timely filed its amended complaint (“FAC”) on December 9, 2024. ECF No. 57 (“FAC”). Google now moves to dismiss EcoFactor’s FAC on the same grounds it asserted in its prior motion to dismiss. ECF No. 63 (“Mot.”).

1 **II. LEGAL STANDARD**

2 To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a
3 complaint must contain “a short and plain statement of the claim showing that the pleader is
4 entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal “is appropriate only where the complaint
5 lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”
6 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). “[A] complaint
7 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
8 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*,
9 550 U.S. 544, 570 (2007)). Factual allegations need not be detailed, but the facts must be “enough
10 to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

11 “*A claim has facial plausibility when the plaintiff pleads factual content that allows the*
12 *court to draw the reasonable inference that the defendant is liable for the misconduct alleged.*”
13 *Ashcroft*, 556 U.S. at 678. While this standard is not “akin to a ‘probability requirement’ . . . it
14 asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (*quoting*
15 *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a
16 defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to
17 relief.’” *Id.* (*quoting Twombly*, 550 U.S. at 557).

18 In determining whether a plaintiff has met the plausibility requirement, a court must
19 “accept all factual allegations in the complaint as true and construe the pleadings in the light most
20 favorable” to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

21 **III. DISCUSSION**

22 The Court previously determined that the asserted claims of the ’394 Patent are not
23 directed to patent eligible subject matter. Order at 12. Despite being “skeptical that any additional
24 allegations could establish that the asserted claims are directed to patent eligible subject matter,”
25 the Court granted EcoFactor “one opportunity to file an amended complaint.” *Id.* at 12.
26 EcoFactor’s FAC adds 57 new paragraphs, FAC ¶¶ 18–75, which allegedly “confirm[] the patent
27 eligibility of the asserted claims.” ECF No. 64 (“Opp.”) at 5.

28 The Court observes that over half of the FAC’s new paragraphs, *see* FAC ¶¶ 18–26, 45–72,

merely copy and paste arguments EcoFactor made in opposing Google’s first motion to dismiss. Although Paragraphs 27–44 purport to set forth new allegations regarding the patent eligibility of the dependent claims and Paragraph 72–75 purport to set forth new allegations regarding extrinsic evidence the Court previously rejected, Paragraphs 18–26 and 45–72 are nearly identical to portions of EcoFactor’s opposition to Google’s first motion to dismiss. *Compare* FAC ¶¶ 47–50, with ECF No. 47 at 9–14, and FAC ¶¶ 66–72, with ECF No. 47 at 23–28.

A. Representative Claim

The parties dispute whether independent claim 1 of the ’394 Patent is representative of the other claims for purposes of patent eligibility. Mot. at 19–20; Opp. at 22–28. The Court previously treated claim 1 as representative after finding “EcoFactor [] failed to make meaningful arguments as to the distinctive significance of the dependent claims in the ’394 Patent.” Order at 6. The Court explained that “EcoFactor’s arguments as to the dependent claims merely repeat[ed] the claim limitations of each claim” and “assert[ed] that these narrowing limitations represent[ed] significant distinctions with no explanation of *how* these limitations meaningfully impact[ed] the patent eligibility analysis.” *Id* (emphasis in original). EcoFactor once again argues that each dependent claim “adds meaningful distinctions that only further demonstrate patent eligibility” Opp. at 22; *see also* ECF No. 47 at 29. EcoFactor specifically argues that the “dependent claims are non-abstract at least because they describe how the improved HVAC monitoring device operates differently than prior art systems.” Opp. at 22. The Court is not persuaded.

As an initial matter, although EcoFactor argues that the dependent claims are separately patent eligible, *see* Opp. 22–28, EcoFactor does not argue that independent claim 1 is not representative of independent claim 10. Accordingly, the Court treats claim 1 as representative of claim 10. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (“Courts may treat a claim as representative in certain situations, such as if the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim or if the parties agree to treat a claim as representative.”).

1 The Court also finds claim 1 is representative of dependent claims 2–9 and 11–18.¹
2 EcoFactor has not shown how the additional limitations present in dependent claims 2–9 and 11–
3 18 “meaningfully impact the patent eligibility analysis.” Order at 6. For example, EcoFactor
4 argues that dependent claims 2 is “separately patent eligible, because it specifically discloses
5 where the first temperature must be received from—a programmable thermostat located inside the
6 structure that is communicating with the climate control device.” Opp. at 22; *see also id.* at 25.
7 But this claim limitation merely adds the use of generic hardware, *see '394 Patent*, 1:65–2:26
8 (describing programmable thermostats used in prior art climate control systems), and EcoFactor
9 does not otherwise explain how the use of a programmable thermostat renders claim 2 distinct
10 from claim 1. EcoFactor also argues that dependent claim 3, which “discloses that the evaluation
11 of operational efficiency must detect a change in the overall operating profile of the climate
12 control device between a specified first-time interval and a specified earlier second time interval,
13 [] recites how the diagnostic step differs from earlier approaches.” Opp. at 23. But this single
14 conclusory sentence is not sufficient to find claim 3 is distinct from claim 1. With respect to
15 dependent claim 4, EcoFactor merely recites the claim language and concludes that this language
16 “renders dependent claim 4 separately patent eligible.” Opp. at 23. This is insufficient to show
17 that claim 4 is distinct from claim 1. EcoFactor also argues that dependent claim 5 “further
18 describes the hardware necessary to practice this claim[] and . . . recites how the system differs
19 from what came before.” Opp. at 23. But as with claim 2, claim 5 merely adds the use of generic
20 hardware—a programmable thermostat with a display device.

21 With respect to claim 6, EcoFactor argues the claim is “non-abstract by reciting a concrete
22 use for the determination in claim 1—identifying potential defects.” Opp. at 23. But EcoFactor
23 does not explain how the limitations in claim 6 “identify[] potential defects[,]” and even accepting
24 EcoFactor’s conclusory allegation as true, EcoFactor has not explained why “identifying potential
25 defects” renders claim 6 distinct from claim 1 for purposes of patent eligibility. EcoFactor also
26 argues that “[t]he inclusion of stored diagnostic temperature profiles associated with a plurality of

27
28 ¹ The limitations recited in dependent claims 2–9, which depend from claim 1, are identical to
those recited in dependent claims 11–18, which depend from claim 10.

1 potential defects and the professors' identification of one or more of those defects based on the
2 automatic evaluation of the operational efficiency is a specific technological improvement." Opp.
3 at 23. But once again, EcoFactor does not explain how this claim limitation improves on prior art
4 climate control systems or why this limitation renders claim 6 distinct from claim 1.² EcoFactor's
5 arguments with respect to claims 7–9 are similarly unpersuasive. *See* Opp. at 24–26 (arguing that
6 claims 7–9 "add[] additional, specific technological improvements . . . that enable EcoFactor's
7 patented invention to operate"). EcoFactor's cursory arguments are insufficient to show that
8 dependent claims 2–9 and 11–18 are distinct from claim 1 and that the claims are separately patent
9 eligible. Order at 6. Accordingly, the Court treats claim 1 as representative.

10 **B. Alice Step One**

11 The Court begins with step one of the *Alice* patent eligibility inquiry, which asks whether
12 the claim is directed to a patent-ineligible abstract idea. At this step, courts consider "what the
13 patent asserts to be the focus of the claimed advance over the prior art." *Yu v. Apple Inc.*, 1 F.4th
14 1040, 1043 (Fed. Cir. 2021), *cert. denied*, 142 S. Ct. 1113 (2022). The Court previously
15 determined that claim 1 of the '394 Patent was directed to the abstract idea of "accounting for
16 thermal mass of a structure in evaluating the operational efficiency of a climate control system."
17 The Court found that the claims were "drafted in a results-oriented way to encompass the entire
18 idea of calculating and comparing thermal efficiency." Order at 6–8. The Court repeats that
19 conclusion here.

20 EcoFactor's arguments with respect to step one of the *Alice* analysis largely repeat
21 arguments the Court previously rejected. For example, EcoFactor argues that claim 1 is not
22 directed to an abstract idea, because it "recites an enhanced climate control system that is smarter
23 than prior systems because it uses particular thermal efficiency calculations to detect decreases in
24 operational efficiency that prior systems were not equipped to detect." Opp. at 8; *see also id.* at 10
25 ("The claimed invention of the '394 patent improves conventional thermostats by using such

26
27

² Even accepting EcoFactor's conclusory argument that the dependent claims improve on prior art
28 climate control systems, this argument appears to be directed to the issue of novelty and not
subject matter eligibility.

1 ‘thermal mass’ and ‘efficiency’ metrics to solve technical shortcomings in diagnosing changes in
2 HVAC efficiency.”), 11 (“[T]he claims are directed to the use of novel thermal efficiency
3 calculations that allow the control system to calculate profiles that account for thermal mass,
4 providing new analysis to improve how the system evaluates decreases in operational
5 efficiency.”). This is the same argument EcoFactor made in opposing Google’s first motion to
6 dismiss. *See* ECF No. 47 at 9 (arguing the ’394 Patent claims “are directed to a novel climate
7 control system that improves the functioning of existing systems, which could not account for
8 thermal mass and differences in building insulation in detecting declines in the operational
9 efficiency of a climate control system”). The Court squarely rejected this argument, explaining
10 that “none of the claims of the ’394 Patent actually recite any particular thermal efficiency
11 calculation, but instead claim the overall idea of calculating and comparing thermal efficiency
12 generally.” Order at 8. The Court further noted that “even if the claim recited a specific thermal
13 efficiency calculation, mathematical algorithms for performing calculations, without more, are
14 patent ineligible under § 101.” *Id.* (quotations and citation omitted).

15 EcoFactor similarly argues that claim 1 “expressly recites” calculations for: (1) “a current
16 operating profile based on comparing a multitude of indoor and outdoor temperatures over time,”
17 (2) “a stored temperature profile based on indoor and outdoor temperatures from a different time
18 period,” and (3) “using these calculated profiles to evaluate whether operational efficiency of the
19 climate control device has decreased over time, and outputting a result of the evaluation.” Opp. at
20 11. Notably, EcoFactor does not cite the language of claim 1 and instead recharacterizes the claim
21 language to support its position. But an examination of the claim language makes clear that claim
22 1 does not actually recite any calculations, much less any “thermal efficiency calculations.” *See*
23 ’394 Patent, cl. 1. EcoFactor’s characterization of the claim language cannot circumvent the claim
24 language itself.

25 EcoFactor also renews its challenge to Google’s “pen and paper” analogy. Opp. at 12.
26 The Court previously agreed with Google, explaining that a human using a prior art HVAC system
27 “could conceivably calculate the thermal mass of the structure by observing a ‘first temperature
28 from inside a structure’ and a ‘second temperature from outside the structure’” and “store the

1 thermal mass calculations as ‘operating profiles’ and use such data to ‘evaluate whether the
2 operational efficiency of the climate control device has decreased over time.’” Order at 8. The
3 Court concluded that the ’394 Patent “merely use[d] conventional computer and networking
4 technology to improve the speed and efficiency of such calculations, but that [was] insufficient to
5 render the claims patent eligible.” *Id.* EcoFactor does not address the Court’s prior reasoning and
6 instead duplicates its prior argument. *Compare* Opp. at 12, *with* ECF No. 47 at 19. The Court
7 once again rejects EcoFactor’s argument and reiterates its prior conclusion that the claimed
8 invention of the ’394 Patent is nothing more than a “mental process[] that can be performed in the
9 human mind or using a pencil and paper.” Order at 7 (quoting *Trinity Info Media, LLC v.*
10 *Covalent, Inc.*, 72 F.4th 1355, 1361 (Fed. Cir. 2023)).

11 EcoFactor also reargues that “numerous EcoFactor patents have been confirmed patent-
12 eligible by multiple judges and a jury—including multiple patents related to the ’394 Patent at
13 issue here.” Opp. at 13; *see also* Dkt. No. 47 at 21–23. Although “cognizant that the Court
14 previously indicated it was ‘not persuaded by these authorities,’ EcoFactor submits that a fresh
15 reexamination of these relevant authorities in conjunction with EcoFactor’s First Amended
16 Complaint compels a different result.” *Id.* at 14. The Court disagrees. EcoFactor has not set forth
17 any new factual allegations rebutting the Court’s prior conclusion that the claims of the ’394
18 Patent are directed to an abstract idea. EcoFactor instead repeats arguments (in both its FAC and
19 opposition brief) that the Court already considered and rejected. In light of the foregoing, the
20 Court again finds that the claims of the ’394 Patent are directed to an abstract idea.

21 **C. Alice Step Two**

22 Having found that claim 1 of the ’394 Patent as directed to an abstract idea, the Court turns
23 to step two of the *Alice* inquiry, which asks “whether the claimed elements—‘individually and as
24 an ordered combination’—recite an inventive concept.” *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927
25 F.3d 1306, 1316 (Fed. Cir. 2019) (quoting *Alice*, 573 U.S. at 217). “An inventive concept reflects
26 something more than the application of an abstract idea using ‘well-understood, routine, and
27 conventional activities previously known to the industry.’” *Id.* Such a concept “must be
28 significantly more than the abstract idea itself, and cannot simply be an instruction to implement

1 or apply the abstract idea on a computer.” *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility*
2 *LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

3 EcoFactor does not dispute that the individual claim elements of claim 1 are not inventive.
4 ECF No. 64 at 15–17. Instead, EcoFactor argues that “the ordered combination of claim elements
5 [a climate control device, processor, and database that work together to receive inside
6 temperatures, receive outside temperatures from a remotely located source, compare large
7 amounts of temperature data to calculate and store a profile reflecting thermal mass, and compare
8 calculated profiles over time to evaluate changes in a climate control device’s operational
9 efficiency] is not conventional . . .” *Id.* at 16. This is the same argument the Court rejected in its
10 prior order, Order at 11, and EcoFactor has not set forth any new arguments explaining why the
11 ordered combination of claim elements is inventive or unconventional.

12 EcoFactor also renews its argument that claim construction disputes preclude Google’s
13 motion to dismiss. The Court previously found EcoFactor had not specifically identified a claim
14 construction dispute that needed to be resolved before the scope of the claims could be understood
15 for § 101 purposes. Order at 12. EcoFactor now argues that the parties’ “unresolved dispute [over
16 the term ‘operational efficiency’] . . . is important because the term ‘operational efficiency’
17 appears in numerous claims of the ’394 Patent.” Opp. at 29. Although EcoFactor has identified a
18 specific claim construction dispute, EcoFactor has not explained how that dispute bears on the
19 Court’s patent eligibility analysis. That a claim construction dispute exists by itself does not
20 preclude a § 101 determination. *Content Extraction & Transmission LLC v. Wells Fargo Bank,*
21 *Nat. Ass’n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014) (“[C]laim construction is not an inviolable
22 prerequisite to a validity determination under § 101.”). EcoFactor has not explained how its
23 proposed construction “would make any difference to the *Alice* analysis.” *Sanderling Mgmt. Ltd.*
24 *v. Snap Inc.*, 65 F.4th 698, 704 (Fed. Cir. 2023); *see also Simio, LLC v. FlexSim Software Prods.,*
25 *Inc.*, 983 F.3d 1353, 1365 (Fed. Cir. 2020) (“The main problem with this argument is that
26 [plaintiff] has not explained how it might benefit from any particular term’s construction under an
27 Alice § 101 analysis.”); *Elec. Commc’n Techs., LLC v. ShoppersChoice.com, LLC*, 958 F.3d 1178,
28 1184 (Fed. Cir. 2020) (concluding the district court properly resolved patent eligibility at the

1 pleadings stage without first conducting claim construction where patentee did not explain how
2 any term's construction "could affect the analysis"). Moreover, even under EcoFactor's proposed
3 construction of "operational efficiency," the Court still finds claim 1 is directed to ineligible
4 subject matter. *Sanderling*, 65 F.4th at 704 ("If claims are directed to ineligible (or eligible)
5 subject matter under all plausible constructions, then the court need not engage in claim
6 construction before resolving a Section 101 motion."). The Court therefore finds the parties'
7 dispute over the term "operational efficiency" does not preclude a § 101 determination.

8 EcoFactor also argues that "[a]dditional [extrinsic] evidence, which the Court did not
9 consider in its previous ruling, reinforces the unconventionality of EcoFactor's solution." Opp. at
10 17.³ EcoFactor argues that the 2007–2007 Global Field Trial Results "show EcoFactor's patented
11 solution was unique in harnessing thermal mass calculations accounting for differences in building
12 insulation." Opp. at 18.⁴ However, EcoFactor does not relate this extrinsic evidence to the claims
13 of the '394 Patent. Simply quoting excerpts from the 2007–2008 Global Field Trial Results,
14 without explaining how those excerpts relate to the claim limitations themselves, is insufficient to
15 demonstrate that the claims of the '394 Patent recite an inventive step. Accordingly, the Court
16 finds that the claims of the '394 Patent lack an inventive concept sufficient to elevate the claims to
17 a patent eligible invention.

18 IV. CONCLUSION

19 For the foregoing reasons, Google's motion to dismiss EcoFactor's complaint is granted.
20 In light of EcoFactor's failure to address the concerns expressed in the Court's prior order, the
21 Court finds that further leave to amend would be futile and dismisses EcoFactor's claims with
22 prejudice. *City of Oakland v. Oakland Raiders*, 445 F. Supp. 3d 587, 603–04 (N.D. Cal. 2020),
23

24 _____
25 ³ EcoFactor previously asked the Court to consider extrinsic evidence of EcoFactor's 2007–2008
26 Global Field Trial Results and testimony from Scott Hublou, one of the named inventors of the
27 '394 Patent. ECF No. 47 at 27. The Court declined to do so, as the extrinsic evidence was not
28 pleaded in the complaint. However, the Court stated that "[i]f EcoFactor believe[d] [] the subject
matter of its extrinsic evidence [was] relevant to the question of patent eligibility, it [was] free to
make such allegations in its pleadings." Order at 12. EcoFactor subsequently amended its FAC to
include allegations regarding this extrinsic evidence. See FAC ¶¶ 72–74.

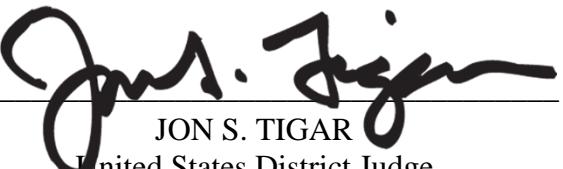
⁴ Again, the Court notes that the claims of the '394 Patent do not themselves describe any
"thermal mass calculations." See '394 Patent, cl. 1.

1 *aff'd*, 20 F.4th 441 (9th Cir. 2021). The Clerk shall enter judgment and close the file.

2 **IT IS SO ORDERED.**

3 Dated: June 24, 2025

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



JON S. TIGAR
United States District Judge